

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 27, 2008

FRANK E. TEASLEY v. JACK MORGAN, WARDEN

Direct Appeal from the Criminal Court for Morgan County
No. 9129 E. Eugene Eblen, Judge

No. E2007-01332-CCA-R3-HC - Filed April 23, 2008

The petitioner, Frank E. Teasley, appeals from the trial court's denial of his petition for habeas corpus relief, arguing that his sentence was imposed in contravention of the United States Supreme Court's ruling in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). However, because the petitioner has failed to comply with the procedural requirements for filing a petition for habeas corpus relief, and because Blakely error is not a cognizable ground for habeas corpus relief, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Joe H. Walker, District Public Defender, and Walter B. Johnson, II, Assistant Public Defender, for the appellant, Frank E. Teasley.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany and John H. Bledsoe, Assistant Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

The petitioner pled guilty to two counts of rape, one count of robbery, and one count of aggravated kidnapping, and received an effective sentence of forty-six years as a Range II, multiple offender. This court affirmed his convictions and sentences on direct appeal. State v. Frank E. Teasley, No. 03C01-9303-CR-00099, 1993 WL 481403, at *1 (Tenn. Crim. App. Nov. 23, 1993). On April 5, 2005, the petitioner filed a *pro se* petition for habeas corpus relief, alleging that (1) he was convicted twice for the same offense, (2) the prosecutor constructively amended the indictments, (3) "[t]he statutes with respect to AGGRAVATED KIDNAPPING two counts Rape do not justify

or permit a distinction between the offense of Rape and Aggravated Kidnapping,” (4) his counsel was ineffective, and (5) the trial court erred by enhancing his sentences based on facts not admitted in the guilty plea, in violation of Blakely. The State filed a motion to dismiss the petition, arguing that the petitioner did not state a cognizable claim for habeas corpus relief because his judgments were not void and his sentences had not expired. The trial court granted the State’s motion to dismiss.

ANALYSIS

On appeal, the petitioner argues only that his sentences are illegal because the trial court enhanced his sentences above the statutory maximum based on facts not admitted in the guilty plea, in contravention of Blakely. The State argues that the trial court properly dismissed the petition because the petitioner did not comply with the statutory procedural requirements for habeas corpus relief, and because Blakely error is not a cognizable claim in habeas corpus. As we will explain, we agree with the State.

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 21 (Tenn. 2004). The formal requirements for an application for habeas corpus relief are codified at Tennessee Code Annotated section 29-21-107, and a trial court “may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements. . . .” Hickman, 153 S.W.3d at 21. In the present case, the petitioner failed to adhere to the mandatory requirements for habeas corpus petitions. First, the petitioner failed to include copies of the judgments of conviction under which he claims he is illegally detained. See Tenn. Code Ann. § 29-21-107(b)(2) (2000). Next, the petitioner failed to state whether the legality of his restraint has already been adjudicated and whether this is his first application for the writ. See id. at § 29-21-107(b)(3), (4). These reasons alone are sufficient to justify the trial court’s dismissal of the petition.

Notwithstanding its procedural deficiencies, the petition also fails to state a cognizable claim for habeas corpus relief. The grounds upon which habeas corpus relief will be granted are narrow. Hickman, 153 S.W.3d at 20 (citations omitted). Relief will only be granted if the petition establishes that the challenged judgment is void. Id. A judgment is void “only when ‘[i]t appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Id. (quoting State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000) (citations omitted)). Unlike the post-conviction petition, the purpose of the habeas corpus petition is to contest a void, not merely voidable, judgment. State ex rel. Newsom v. Henderson, 221 Tenn. 24, 30, 424 S.W.2d 186, 189 (1968). If the habeas corpus petition fails to demonstrate that the judgment is void or that the confinement is illegal, neither appointment of counsel nor an evidentiary hearing is required and the trial court may properly dismiss the petition. Hickman, 153 S.W.3d at 20 (citing Tenn. Code Ann. § 29-21-109 (2000); Dixon v. Holland, 70 S.W.3d 33, 36 (Tenn. 2002)).

The petitioner's claim that his sentence violates Blakely is without merit because his case became final on direct review before Blakely was decided. "*Apprendi/Blakely* type issues regarding allocating fact-finding authority to judges during sentencing are not in the narrow class of procedural rules that apply retroactively." Ulysses Richardson v. State, No. W2006-01856-CCA-R3-PC, 2007 WL 1515162, at *2 (Tenn. Crim. App. May 24, 2007), perm. to appeal denied (Tenn. Sept. 17, 2007). Moreover, even a valid Blakely claim renders a conviction voidable, not void, and is thus non-cognizable in habeas corpus review. Id. at *3. Because the petition did not state a cognizable claim for habeas corpus relief, summary dismissal by the trial court was proper.

CONCLUSION

Based on the foregoing authorities and reasoning, the judgment of the trial court is affirmed.

ALAN E. GLENN, JUDGE